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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,233	12/05/2003	Roger Thomas	P-US-PR 1110	9213
7590	11/14/2005		EXAMINER SELF, SHELLEY M	
Michael P. Leary Group Patent Counsel Black & Decker Corporation 701 E. Joppa Rd., Mail Stop TW199 Towson, MD 21286			ART UNIT	PAPER NUMBER
			3725	
DATE MAILED: 11/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,233

Applicant(s)

THOMAS ET AL.

Examiner

Shelley Self

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3-7 and 9-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed on September 9, 2005 has been considered but is ineffective to overcome the prior art reference.

Terminal Disclaimer

The terminal disclaimer filed on October 19, 2005 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-7 and 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 1, lines 14-15, it is unclear what is meant by, "*connected to recess...*" Clarification is required.

With regard to claim 2, line 2 it is unclear what is meant by, "*...the wall that defines the expulsion aperture also defines a top to exhaust aperture...*" no exhaust aperture has been positively recited. Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 as best as can be understood is rejected under 35 U.S.C. 102(b) as being anticipated by Zaiser et al. (4,601,104) as set forth in the previous Office Action.

Allowable Subject Matter

Claims 3-7 and 9-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or suggest a *deflector having an exterior surface...wherein the conduit directs the airflow over the exterior surface of the deflector prior to directing the airflow to the vicinity of the expulsion aperture* in combination with the rest of the claimed limitations as set forth in claim 3.

The prior art reference Zaiser discloses a planer having a shoe, the shoe defining an aperture, a body mounted on the shoe, a cutting drum having cutting blades rotatably mounted within a recess defined by the body. Zaiser further discloses a motor for driving the cutting drum and an airflow generator (fan) for producing airflow within the body to facilitate remove of debris from the body. Zaiser also discloses a conduit defined by the body. Zaiser does not disclose a deflector insertable into the planer body and instead discloses a flap; the flap being pivotable to facilitate expulsion of the debris/chips from either side of the planer body housing.

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Accordingly, Zaiser fails to anticipate or render obvious the claimed invention as set forth in claim 3.

Bellew et al. (5,463,816) discloses a planer comprising a shoe, the shoe defining an aperture (fig. 5); a body mounted on the shoe (fig. 5); the body including a wall and the wall defining a recess and an expulsion aperture; a cutting drum (28) rotatably mounted within the recess, the drum having a periphery and a portion of the periphery of the cutting drum projecting through the aperture; a motor (24) for rotatingly driving the cutting drum; a cutting blade (40) mounted on the periphery of the drum; an airflow generator (26) for producing an airflow within the body for entraining and removing debris created by the cutting action of the blade; a conduit (42) defined within the body for directing the airflow, the conduit connected to the recess by the expulsion aperture; and wherein the debris entering the conduit through the expulsion aperture travels substantially in a first direction (directional arrows fig. 5) and the airflow through the conduit adjacent to the expulsion aperture travels substantially in a second direction, and the first direction of the debris and the second direction of the airflow intersect at an acute angle. Bellew further discloses a deflector (12) assembly including a nozzle (56) that is insertable and positionable into the planer body (fig. 2,3) to direct debris away from a user (col. 3, lines 55-65). Bellew does not disclose the *conduit directs airflow over the exterior surface of the deflector prior to directing the airflow to the vicinity of the expulsion aperture*. Accordingly Bellew fails to anticipate or render obvious the claimed invention as set forth in claim 3.

Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claim 3. Therefore, claims 3-7 and 9-14 contain allowable subject matter over the prior art of record.

Response to Arguments

Applicant's arguments filed August 18, 2005 have been carefully considered but are not deemed persuasive. Applicant's remarks are drawn to the failure of prior art reference Zaiser et al (hereinafter referred to as Zaiser) to disclose, "a conduit defined within the body for directing the airflow, the conduit connected to recess by the expulsion aperture". This argument however is not found persuasive because Zaiser discloses the conduit (11) housing the planning head/cutting drum (4) and to extend directly below the chip ejection channel (5) both of which are defined by the body, thus a portion of the channel (11) is defined by the body. The claim as written states, "defined by the body" the claim does not state housed or enclosed by the body, thus because the beginning and ending portions of the channel (11) are a function of the body of the planer, the channel is defined by the body. Accordingly the rejection is proper and stands.

As to an enclosure or housing of a channel by the body, Applicant should note prior art reference Bellew et al. (5,463,816).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf

November 2, 2005



DERRIS H. BANKS
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